IN THE

Supreme Court of the United States

JUNE TERM, 1975

No. 74-1578

TOWN OF MANCHESTER, *Appellant*

vs.

MURIEL GROVER, *Appellee*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE SUPREME COURT
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JURISDICTIONAL STATEMENT

Appellant, Town of Manchester, appeals from the judgment of the Supreme Court of Connecticut, entered on March 19, 1975, upholding the constitutionality of Section 7-433c of the Connecticut General Statutes (Rev. of 1958, revised to 1975), and submits this Statement to show that the Supreme Court of the United States has jurisdiction and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of Connecticut is reported at 36 Conn. L.J. No. 36 at p 11. (March 4, 1975); a copy appears as Appendix A. The order of the Supreme Court of Connecticut denying Appellant's Motion to Reargue is unpublished; a copy appears as Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(2), this being an appeal which draws into question the validity of Section 7-433c of the Connecticut General Statutes (Rev. of 1958, revised to 1975), on the ground that it is repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Appellant was ordered to pay benefits to Muriel P. Grover under Section 7-433c of the Connecticut General Statutes (Rev. of 1958, revised to 1975) by the Connecticut Workmen's Compensation Commissioner for the First District. On March 4, 1975, the award of benefits was affirmed by the Supreme Court of Connecticut; the same Court denied a timely Motion to Reargue on March 19, 1975. The Notice of Appeal was filed on June 11, 1975 in the Supreme Court of Connecticut; a copy appears as Appendix C.

Because the Supreme Court of Connecticut expressly rejected Appellant's Fourteenth Amendment due process challenge to Section 7-433c of the Connecticut General Statutes (Rev. of 1958, revised to 1975), this case is appropriately brought to this Court by appeal. *See, e.g., Sibron v. New York,* 392 U.S. 40 (1968).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States.

This case also involves Section 7-433c of the Connecticut General Statutes (Rev. of 1958, revised to 1975), which reads:

> **Sec. 7-433c. Benefits for policemen or firemen disabled or dead as a result of hypertension or heart disease.** In recognition of the peculiar problems of uniformed members of paid fire departments and regular members of paid police departments, and in recognition

of the unusual risks attendant upon these occupations, including an unusual high degree of susceptibility to heart disease and hypertension, and in recognition that the enactment of a statute which protects such fire department and police department members against economic loss resulting from disability or death caused by hypertension or heart disease would act as an inducement in attracting and securing persons for such employment, and in recognition, that the public interest and welfare will be promoted by providing such protection for such fire department and police department members, municipal employers shall provide compensation as follows: Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems.

As used in this section, the term "municipal employer" shall have the same meaning and shall be defined as said term is defined in section 7-467.

QUESTION PRESENTED

Whether Section 7-433c of the Connecticut General Statutes (Rev. of 1958, revised to 1975) deprives the Appellant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

This case was considered twice by the Supreme Court of Connecticut. In the first appeal, the Supreme Court of Connecticut decided a procedural issue arising under Section 7-433c of the Connecticut General Statutes (Rev. of 1958, revised to 1975). Having resolved the procedural issue, the Supreme Court of Connecticut found it unnecessary to decide the constitutional issues raised by the Appellant, Town of Manchester. *Grover v. Town of Manchester,* 35 Conn. L.J. No. 27 at p. 7 (Jan. 1, 1974). A copy of the opinion on the first appeal appears as Appendix D.

Subsequently, a hearing was held before a Connecticut workmen's compensation commissioner. The facts developed at that hearing have been stipulated. Appellee Muriel Grover is a dependent of Leo Grover within the meaning of Section 7-433c. On September 7, 1971, Leo Grover suffered an acute myocardial infarction from a coronary occlusion and died as a result. At the time of his death, Leo Grover was employed as a regular member of the paid police department of the Appellant, Town of Manchester. Upon entering his employment, Leo Grover passed a physical examination which failed to reveal any evidence of hypertension or heart disease.

Leo Grover's last working day as a policeman was September 4, 1971. On September 5, 6, and 7, 1971, Leo Grover was off duty. When death occurred on September 7, 1971, Leo Grover was at home.

Leo Grover did not sustain any accidental injury arising out of and in the course of his employment as a police officer for the Town of Manchester which caused or contributed to his death. Leo Grover did not suffer any repetitive trauma or repetitive acts which caused or contributed to his death. Leo Grover did not suffer from an occupational disease within the meaning of §31-275[1] of the Connecticut General Statutes. Leo Grover's death was not compensable within the meaning of Chapter 568 of the Connecticut General Statutes, the Workmen's Compensation Act.

On these facts, the commissioner entered an order, pursuant to Section 7-433c, requiring the Town of Manchester to pay to Muriel Grover the sum of $84.00 weekly commencing September 8, 1971, and continuing until her death or remarriage; and medical and funeral benefits in the amount of $1,040.00. The commissioner's Award of Compensation Pro Forma appears as Appendix E.

During the hearing before the commissioner, the Town of Manchester argued that Section 7-433c deprives the Town of Manchester of due process of law in violation of the Fourteenth Amendment to the United States Constitution, but the commissioner decided that he lacked the power to decide the constitutional question. The Transcript of the February 27, 1974 hearing, reads, in pertinent part, as follows:

> *Mr. FitzMaurice:* That would conclude my offers, Commissioner. I would like to raise the constitutional point at this time.
>
> *Commissioner:* Well, as far as the constitutionality of any statute is concerned, I don't think that it is within my province as a Commissioner to determine that. I

[1] Section 31-275 defines "occupational disease" as follows:

"Occupational disease" includes any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such and includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his employment.

can only abide by the statute and enforce the statute as it exists on the books.

Mr. FitzMaurice: Commissioner, may I put my arguments on the record?

Commissioner: You may.

Mr. FitzMaurice: Commissioner, the position of the Town of Manchester, that [§ 7-433c], deprives the Town of Manchester of due process of law [in violation of] the due process clauses of the United States and Connecticut Constitutions if applied to this case and indeed if applied to any case. . . .

Commissioner: I see. Well, let me say this, gentlemen, that I know that there is a question of constitutionality involved here; however, as I said before, I have no authority to pass on. . . .

The due process question and another question were reserved directly to the Supreme Court of Connecticut, which phrased the due process question as follows:

> Does §7-433c of the General Statutes deprive the town of Manchester of property without due process of law in violation of the due process clauses of the United States and Connecticut constitutions? [36 Conn. L.J. No. 36 p. 11 (March 4, 1975)].

The Court said later in the opinion: "each of the two questions submitted to us by reservation . . . must be answered in the negative." [36 Conn. L.J. No. 36 at p. 12 (March 4, 1975)].

A timely Motion to Reargue was denied by the Supreme Court of Connecticut on March 19, 1975.

THE FEDERAL QUESTION IS SUBSTANTIAL

As written, and as construed by the Supreme Court of Connecticut, §7-433c imposes liability upon Connecticut municipalities for all injuries and deaths of policemen and firemen attributable to hypertension or heart disease, notwithstanding the fact that a particular injury or death may have no connection with the employee's employment.

To use the example of the Supreme Court of Connecticut, the statute would render a municipality liable for the death or disability of "[a] perfectly healthy off-duty . . . policeman who brought on a heart attack by overexertion on the last day of a lengthy out-of-state vacation." *Ducharme v. Putnam,* 161 Conn. 135, 140, 285 A.2d 318 (1971). The imposition of this type of liability raises a serious question under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Section 7-433c is the latest in a long series of Connecticut statutes which have established various presumptions that, in the case of policemen and firemen, heart related injuries and deaths are employment connected. Its predecessor, Connecticut Public Act 380, §1 (1969), was declared unconstitutional as violative of due process by the Supreme Court of Connecticut in *Ducharme v. Putnam,* 161 Conn. 135, 285 A.2d 318 (1971).[2] Within two weeks of the *Ducharme* decision, the Connecticut legislature debated and passed §7-433c.

The decision of the Supreme Court of Connecticut ignores two lines of decisions by this Court in which legislation carrying consequences similar to those of §7-433c has been found to be violative of due process. Although both lines of decisions were cited, the Supreme Court of Connecticut failed to discuss even one decision. The opinion of the Supreme Court of Connecticut resolved the due process question in this paragraph:

> As we stated recently in *Whitfield v. Empire Mutual Ins. Co.* . . . (36 Conn. L.J., No. 30, pp. 13, 15): "'[A] plaintiff who attacks a statute on constitutional grounds has no easy burden.' . . . 'When the constitu-

[2] In *Ducharme,* the Court held that Connecticut municipalities have standing to challenge state statutes under both federal and state constitutional provisions. The Court said that this Court's contrary holding in *Williams v. Mayor,* 289 U.S. 36, 40 (1933) had been largely eroded by later decisions such as *Flast v. Cohen,* 392 U.S. 83 (1968). 161 Conn. 135, 137-39, 285 A.2d 318 (1971).

> tionality of legislation is in question, it is the duty of the court to sustain it unless its invalidity is beyond a reasonable doubt. . . . It is a rule of statutory construction . . . that courts are bound to assume that the legislature, in enacting a particular law, did so upon proper motives and to accomplish a worthy objective.'" Although the statute under consideration is not regulatory, it does impose upon a town a financial obligation which, like restrictive regulations, is justified in the interest of promoting public safety, and does not deprive a town of property without due process of law. [36 Conn. L.J. No. 36 at p. 12 (March 4, 1975)].

Because §7-433c was hastily enacted, the Connecticut legislature's basis for imposing liability is unclear. The opinion of the Connecticut Supreme Court provides no constitutional basis for the imposition of liability. Section 7-433c can be construed: 1) as imposing liability on the basis of an unexpressed conclusive presumption that, in the case of policemen and firemen, all heart-related injuries and deaths are employment connected; or 2) as imposing liability without regard to the connection or lack of connection between the injury or death and the employment. Appellant respectfully submits that, under either construction, §7-433c runs afoul of the due process clause of the Fourteenth Amendment.

Construction 1

No matter what the context, statutes creating conclusive presumptions have not survived due process challenges in this Court. *Board of Education v. LaFleur,* 414 U.S. 632 (1974); *United States Dep't. of Agriculture v. Murry,* 413 U.S. 508 (1973); *Vlandis v. Kline,* 412 U.S. 441 (1973); *Stanley v. Illinois,* 405 U.S. 645 (1972); *Bell v. Burson,* 402 U.S. 535 (1971); *Carrington v. Rash,* 380 U.S. 89 (1965); *Hoeper v. Tax Commission,* 284 U.S. 206 (1931); *Schlesinger v. Wisconsin,* 270 U.S. 230 (1926).

In *Board of Education v. LaFleur,* 414 U.S. 632 (1974), school teachers challenged mandatory maternity leave rules

which required every pregnant school teacher to take a maternity leave beginning in one case four months and in another case five months before the expected date of delivery. One explanation offered for the rules by the school boards was that, since some teachers are phyhically unable to teach after the cut-off dates, the rules were necessary to keep physically unfit teachers out of the classroom. In holding the rules to be violative of due process, this Court said:

> The question remains as to whether the . . . cut-off dates can be justified on the other ground advanced by the school boards — the necessity of keeping physically unfit teachers out of the classroom. There can be no doubt that such an objective is perfectly legitimate, both on educational and safety grounds. And, despite the plethora of conflicting medical testimony in these cases, we can assume *arguendo* that at least some teachers become physically disabled from effectively performing their duties during the latter stages of pregnancy.
>
> The mandatory termination . . . rules surely operate to insulate the classroom from the presence of potentially incapacitated pregnant teachers. But the question is whether the rules sweep too broadly. See *Shelton v. Tucker,* 364 U.S. 479. That question must be answered in the affirmative, for the provisions amount to a conclusive presumption that every pregnant teacher who reaches the fifth or sixth month of pregnancy is physically incapable of continuing. There is no individualized determination by the teacher's doctor — or the school board's — as to any particular teacher's ability to continue at her job. The rules contain an irrebuttable presumption of physical incompetency, and that presumption applies even when the medical evidence as to an individual woman's physical status might be wholly to the contrary. [414 U.S. 632, 643-44 (1974)].[3]

[3] Medical studies have plainly established that heart-related diseases cannot be considered "occupational diseases." In 1962, a committee of the American Heart Association headed by Dr. Paul Dudley White observed:

> [T]here are states in which the legislatures have passed so-called "heart laws", proclaiming that in the case of certain favored employees, such as firemen and policemen, the development of heart disease or hypertension is presumed to be service-connected; in

In *Vlandis v. Kline,* 412 U.S. 441 (1973), this Court declared unconstitutional a Connecticut statute which created a conclusive presumption of non-residency for certain students. Noting that "permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments" [412 U.S. 441, 446 (1973)], this Court said:

> [I]t is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination. [412 U.S. 441, 452 (1973)]

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other words, legislative fiat defines them as occupational disease. [Report of the Committee on the Effect of Strain and Trauma on the Heart and Great Vessels, American Heart Association, 26 Circulation 612, 614 (1962)]

Finding no basis in medical evidence for such legislation, Dr. White's committee made the following recommendation:

> [I]n view of the current absence of acceptable scientific confirmation, heart disease, except in the rare instances mentioned, shall not be considered as arising out of employment and that presumptive legislation affirming causal relationship of heart disease to any type of employment is unjustified by present scientific evidence. [Report of the Committee on the Effect of Strain and Trauma on the Heart and Great Vessels, American Heart Association, 26 Circulation 612, 618 (1962)]

A later study reached the same conclusion. I National Conference on Cardiovascular Diseases, Research 519-25 (1964). The conference first observed:

> In some states, laws have been passed affirming the appearance of hypertension or "heart attacks" as caused by civil service employment in certain categories, such as that of policeman or fireman—in other words, determination of etiology of disease by legislative fiat. This movement is growing under political pressures, in the absence of any scientific support. [I National Conference On Cardiovascular Diseases, Research 520 (1964)].

The conference made the following recommendation:

> Education should include the public, as well as medical groups; in particular, representatives from business, labor and the legal professions. It is important that all of these appreciate that coronary artery disease is not peculiar to any occupation and that it is, therefore, not an "occupational disease." [I National Conference On Cardiovascular Diseases, Research 523-24 (1964)].

In *Stanley v. Illinois,* 405 U.S. 645 (1972), this Court struck down an Illinois statute which created a conclusive presumption that unmarried fathers are incompetent to raise their children. The state attempted to justify the statute on the theory that most unmarried fathers are either disinterested in the welfare of their children or are simply unfit parents. This Court responded:

> It may be, as the State insists, that most unmarried fathers are unsuitable and neglectful parents. It may also be that Stanley is such a parent and that his children should be placed in other hands. But all unmarried fathers are not in this category; some are wholly suited to have custody of their children. (footnotes omitted) [405 U.S. 645, 654 (1972)]

Similarly, in *Carrington v. Rash,* 380 U.S. 89 (1965), this Court struck down a Texas constitutional provision which created a conclusive presumption that servicemen who moved to Texas during their tour of military service were not residents and therefore could not vote. The Court recognized Texas' legitimate interest in establishing rules to make certain that only bona fide residents vote, but said:

> [T]his constitutional provision goes beyond such rules. "[T]he presumption here created is . . . definitely conclusive — incapable of being overcome by proof of the most positive character." All servicemen not residents of Texas before induction come within the provision's sweep. Not one of them can ever vote in Texas, no matter how long Texas may have been his true home. (citations omitted) [380 U.S. 89, 96-97 (1965)]

The proscription against conclusive presumptions applies whether the presumption created by the statute is expressed or unexpressed. Recently, in *Vlandis v. Kline,* 412 U.S. 441 (1973), this Court struck down three sections of Public Act 5, §126 (1971), Connecticut's tuition-residency act, holding that those sections created a constitutionally invalid conclusive presumption. The sections in issue neither contained the word "presumption" nor made any reference to any

other section which created a presumption; the conclusive presumption created by these sections was *unexpressed.* Nevertheless, looking to substance rather than form, the Court phrased the constitutional issue in these terms:

> The present case concerns the constitutional validity of [the] conclusive and unchallengable presumption of non-resident status from the fact that, at the time of application for admission, the student, if married, was then living outside of Connecticut, or, if single, had lived outside the State at some point during the preceding year. [412 U.S. 441, 443 (1973)]

In looking to substance rather than form, this Court followed the *Heiner* rule that:

> [a] constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. . . .
>
> If a legislative body is without power to enact as a rule of evidence a statute denying a litigant the right to prove the facts of this case, certainly the power cannot be made to emerge by putting the enactment in the guise of a rule of substantive law. [*Heiner v. Donnan,* 285 U.S. 312, 329 (1932)]

Vlandis forecloses the argument that a legislature can circumvent the due process clause simply by drafting statutes containing unexpressed conclusive presumptions. *Vlandis* teaches that whether a conclusive presumption created by a statute is expressed or unexpressed, the statute stands on the same constitutional footing. Accordingly, if this Court construes §7-433c as imposing liability on this basis of an unexpressed conclusive presumption, this Court should declare §7-433c to be violative of the due process clause of the Fourteenth Amendment.

Construction 2

Section 7-433c stands on no firmer constitutional footing if it is construed to impose liability without regard to

the connection or lack of connection between the injury and the employment. Section 7-433c and prior statutes which conferred benefits upon policemen and firemen for heart-related injuries trace their origins to Connecticut's first Workmen's Compensation Act, passed in 1913. Public Acts of 1913, Chap. 138. Early workmen's compensation legislation, enacted in this country at the turn of the century, encountered a variety of constitutional challenges. Between 1917 and 1923 this Court heard six cases involving challenges to the constitutionality of the legislation. *See Cudahy Packing Co. v. Parramore,* 263 U.S. 418 (1923); *Madera Co. v. Industrial Accident Commission,* 262 U.S. 499 (1923); *Arizona Employers' Liability Cases,* 250 U.S. 400 (1919); *New York Central R.R. Co. v. White,* 243 U.S. 188 (1917); *Hawkins v. Bleakly,* 243 U.S. 210 (1917); *Mountain Timber Co. v. Washington,* 243 U.S. 219 (1917). Challenges based upon the due process clause of the Fourteenth Amendment were raised, at least tangentially, in each case. In *Cudahy Packing Co. v. Parramore,* 263 U.S. 418 (1923), the Court discussed the concept of due process and explained the constitutional basis of the legislation:

> Workmen's Compensation legislation rests upon the idea of status, not upon that of implied contract; that is, upon the conception that the injured workman is entitled to compensation for an injury sustained in the service of an industry to whose operations he contributes his work as the owner contributes his capital — the one for the sake of wages and the other for the sake of profits. The liability is based, not upon any act or omission of the employer, but upon the existence of the relationship which the employee bears to the employment because of and in the course of which he has been injured. And this is not to impose liability upon one person for an injury sustained by another with which the former has no connection; but it is to say that it is enough if there be a causal connection between the injury and the business in which he employs the latter -- a connection substantially contributory though it need not be the sole or proximate cause. Legislation which

> imposes liability for any injury thus related to the employment, among other justifying circumstances, has a tendency to promote a more equitable distribution of the economic burdens in cases of personal injury or death resulting from accidents in the course of industrial employment, and is a matter of sufficient public concern . . . to escape condemnation as arbitrary, capricious or clearly unreasonable. [263 U.S. at 423-24 (1923)]

In *Cudahy,* the packing company challenged the Utah Workmen's Compensation Act which provided for compensation for personal injury or death arising in or out of the course of employment. The employee, Parramore, was killed while travelling to work when the car in which he was riding collided with a train. The railroad crossing was located adjacent to the packing plant at the only practical point of ingress and egress. The packing company argued that the due process clause barred the imposition of liability because no connection existed between Parramore's injury and his employment. The Court responded:

> It may be assumed that where an accident is in no manner related to the employment, an attempt to make the employer liable would be so clearly unreasonable and arbitrary as to subject it to the ban of the Constitution .... [263 U.S. at 423 (1923)]

After reviewing English and state court decisions on the course of employment concept, the Court ruled that a sufficient connection existed between Parramore's injury and his employment to satisfy the due process clause.

The *Cudahy* decision plainly teaches that a statute which imposes liability upon an employer for employee injuries which are not connected with the employment is unreasonable, arbitrary and subject to the ban of the due process clause. Accordingly, if this Court construes §7-433(c) as imposing liability without regard to the connection or lack of connection between the injury and the employment, this Court should declare §7-433c to be violative of the due process clause of the Fourteenth Amendment.

CONCLUSION

For the above reasons, probable jurisdiction should be noted.

Respectfully submitted,

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Appendix A

SUPREME COURT

DECEMBER TERM, 1974

MURIEL P. GROVER *v.* TOWN OF MANCHESTER ET AL.
(No. 7591)

MURIEL P. GROVER *v.* TOWN OF MANCHESTER ET AL.
(No. 7606)

Appeal by the named defendant from an award of the workmen's compensation commissioner for the first district, brought to the Court of Common Pleas in Hartford County, *Collins, J.*, and to the Superior Court in Hartford County, *Driscoll, J.*, and reserved by both courts for the advice of this court.

Maurice T. FitzMaurice, for the appellant (named defendant in both cases).

Thomas P. FitzGerald, with whom, on the brief, was *Herbert A. Phelon, Jr.,* for the appellee (plaintiff in both cases).

MACDONALD, J. The issues raised by these two reservations, one from the Superior Court and one from the Court of Common Pleas under the same name, are identical and involve the constitutionality of § 7-433c of the General Statutes entitled "Benefits for policemen or firemen disabled or dead as a result of hypertension or heart disease."

The relevant facts, as stipulated by the parties, are as follows: The plaintiff, Muriel Grover, is a dependent of Leo Grover, hereafter Grover, who died on September 7, 1971, from a coronary occlusion and who, at the time of his death, was employed as a regular paid member of the police department of the defendant town of Manchester. When first

employed as a policeman, Grover successfully passed a physical examination which revealed no evidence of hypertension or heart disease. He did not sustain any accidental injury arising out of and in the course of his employment or suffer any repetitive trauma or acts which caused or contributed to his death, nor did he suffer from any occupational disease. His death was not compensable within the meaning of chapter 568 of the General Statutes, the Workmen's Compensation Act, and the commissioner, at a hearing, denied offers of the defendant town of Manchester to prove the foregoing facts concerning the cause of death. The commissioner also declined to decide the constitutional questions raised by the defendant town, and these questions, by stipulation, have been reserved to this court under the provisions of § 31-324 for reservations from the Superior Court, and § 31-301 for reservations from the Court of Common Pleas, in workmen's compensation appeals. The two questions thus reserved are as follows: (1) Does § 7-433c of the General Statutes deprive the town of Manchester of property without due process of law in violation of the due process clauses of the United States and Connecticut constitutions? (2) Does the class preference created by § 7-433c contravene § 1 of article first of the Connecticut constitution?

Section 7-433c recently was before us in *Grover* v. *Manchester,* Conn. (35 Conn. L.J., No. 27, p. 7) raising a procedural issue which was decided without a resolution of the two collateral constitutional questions raised here. It was enacted in its present form in 1971, as set forth in full in the footnote,[1] within two weeks of our decision in *Ducharme* v. *Putnam,* 161 Conn. 135, 285 A.2d 318, which declared unconstitutional a predecessor statute, Public Acts 1969, No. 380 § 1 (§ 7-433a), which had attempted to provide benefits identical to those of the statute now before us by raising a conclusive presumption. In *Ducharme,* we did not consider the merits of the legislature's intended purpose but only the method employed to attain that purpose. In oher words, our legislature promptly acted to do what this court could not and refused to do in *Ducharme* and rewrote the statute by simply providing special compensation, or even an outright bonus, to qualifying policemen and firemen.

[1] "[Public Acts 1971, No. 524 § 1; General Statutes] Sec. 7-433c. BENEFITS FOR POLICEMEN OR FIREMEN DISABLED OR DEAD AS A RESULT OF HYPERTENSION OR HEART DISEASE. In recognition of the peculiar problems of uniformed members of paid fire departments and regular members of paid police departments, and in recognition of the unusual risks attendant upon these occupations, including an unusual high degree of susceptibility to heart disease and hypertension, and in recognition that the enactment of a statute which protects such fire department and police department members against economic loss resulting from disability or death caused by hypertension or heart disease would act as an inducement in attracting and securing persons for such employment, and in recognition, that the public interest and welfare will be promoted by providing such protection for such fire department and police department members, municipal employers shall provide compensation as follows: Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. As used in this section, the term 'municipal employer' shall have the same meaning and shall be defined as said term is defined in section 7-467."

As we stated recently in *Whitfield* v. *Empire Mutual Ins. Co.*, Conn. (36 Conn. L.J., No. 30, pp. 13, 15): "'[A] plaintiff who attacks a statute on constitutional grounds has no easy burden.' . . . 'When the constitutionality of legislation is in question, it is the duty of the court to sustain it unless its invalidity is beyond a reasonable doubt. . . . It is a rule of statutory construction . . . that courts are bound to assume that the legislature, in enacting a particular law, did so upon proper motives and to accomplish a worthy objective.'" Although the statute under consideration is not regulatory, it does impose upon a town a financial obligation which, like restrictive regulations, is justified in the interest of promoting public safety, and does not deprive a town of property without due process of law.

It is difficult to call to mind any field of activity more closely related to the public safety than the encouragement of qualified individuals to seek employment as firemen and policemen.[2] It is evident from the preamble to § 7-433c that the legislature took into consideration the peculiar problems and unusual risks attendant upon these occupations in determining that they properly occupy a different status from other municipal employees. No other group has to withstand the abuses and attacks of the oppressed and frustrated of our modern society or carry with them a constant apprehension that they may be the target of maniacal revenge; no other municipal employees are called out from the security of their homes to ensure the security of the homes of others; no other municipal employees are required to make immediate decisions which are the subject of debate and deliberation in our courts. This is, indeed, class legislation somewhat analogous to the veterans' bonus legislation which passed the constitutional tests applied in *Lyman* v. *Adorno*, 133 Conn. 511, 514, 52 A.2d 702, and we refer to the extensive collection of authorities cited in the opinion in that case.

[2] We employ the exact terminology of the statute rather than the more recent references to "firepersons" and "policepersons."

We conclude that the statute under consideration serves a proper public purpose and that, accordingly, the fact that it incidentally confers a direct benefit upon a certain class of individuals does not render it invalid as creating a class preference which contravenes § 1 of article first of the Connecticut constitution.

For the foregoing reasons, each of the two questions submitted to us by reservation from the Court of Common Pleas in No. 7591 must be answered in the negative.

Since the same two questions have been raised by reservation from the Superior Court in No. 7606, it would appear to serve no useful purpose and only to create unnecessary duplication of procedure and expense to require rendition of judgment in that court based upon identical answers. The reservation from the Court of Common Pleas was filed pursuant to § 31-301 of the General Statutes, which provides that all appeals from an award by a workmen's compensation commissioner shall be taken to the Court of Common Pleas.[3] As originally adopted in 1961, this section provided for such appeals to be taken to the Superior Court, but it was amended in 1972 (Public Act No. 108, § 6, effective September 1, 1972) by the substitution throughout of "Court of Common Pleas" for "Superior Court." At that time, no action was taken specifically to amend or repeal § 31-324, which then provided, as it does now, for reservation by the Superior Court to this court, "[w]hen, in any case arising under the provisions of this chapter, the superior court is of the opinion that the decision involves principles of law which are not free from reasonable doubt," and, further, that a pro forma award be made by the commissioner pend-

[3] The relevant portions of § 31-301, at all times pertinent to this action read, and presently read, as follows: "At any time within ten days after entry of such award by the commissioner or after a decision of the commissioner upon a motion, either party may appeal therefrom to the court of common pleas for the county in which the injury occurred . . . . The procedure in appealing from an award of the compensation commissioner shall be the same as the procedure employed in an appeal from the court of common pleas to the supreme court."

ing the opinion of this court on such reservation.[4] The reference to "any case arising under the provisions of this chapter" identifies such case as falling within the broad spectrum covered by § 31-301, and the conclusion is at least logical, if not inescapable, that it was only through oversight that § 31-324 was not either expressly repealed or amended by substituting "Court of Common Pleas" for "Superior Court" wherever the latter appears therein. In addition to that consideration, the provisions of Public Act No. 74-183, effective December 31, 1974, for appellate sessions of the Superior Court for the review of cases on appeal from the Court of Common Pleas, lead us to the conclusion that the reservation from the Court of Common Pleas was the proper procedure to follow and that the reservation from the Superior Court should be and hereby is dismissed for lack of jurisdiction.

No costs will be taxed in this court in favor of any party.

In this opinion the other judges concurred.

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[4] Section 31-324, at all times pertinent to this action read, and presently reads, as follows: "RESERVATION OF CASES FOR THE SUPREME COURT. When, in any case arising under the provisions of this chapter, the superior court is of the opinion that the decision involves principles of law which are not free from reasonable doubt and which public interest requires shall be determined by the supreme court, in order that a definite rule be established applicable to future cases, said court may, on its own motion and without any agreement or act of the parties or their counsel, reserve such case for the opinion of the supreme court. Upon a reservation so made, no costs shall be taxed in favor of either party, and no entry fee, record fee, judgment fee or other clerk's fee in either court shall be taxed. If the commissioner finds that a claim before him involves a doubtful question of law, which the public interest requires should be finally and definitely determined, he may find the facts as in other cases and make his award, indicating that it is pro forma. A pro forma award shall be of the same effect as an award in ordinary cases except in the following particulars: On the filing of a pro forma award, the question shall come before the superior court as though an appeal had been taken, and said court shall thereupon reserve the case for the opinion of the supreme court in the manner herein indicated; but if, in the opinion of the superior court, the principles of law involved in the decision are in fact free from reasonable doubt and the public interest does not in fact require that they be determined by the supreme court, the superior court may, in its discretion, hear and determine the controversy as in other cases."

Appendix B

No. 7591 and 7609 (2 cases)

MURIEL P. GROVER *v.* TOWN OF MANCHESTER, ET AL

March 19, 1975 — The defendants' motion to reargue is denied.

By the Court,

/s/ HOUSE

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Chief Justice

Appendix C

IN THE SUPREME COURT
OF THE STATE OF CONNECTICUT

MURIEL GROVER,

Appellee No. 7591

VS.

TOWN OF MANCHESTER, ET AL MAY TERM, 1974

Appellant

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that the Town of Manchester, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Connecticut, upholding the constitutionality of § 7-433c of the General Statutes of Connecticut (Revision of 1958, revised to 1975), entered in this action on March 19, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

[s] MAURICE T. FITZMAURICE

MAURICE T. FITZMAURICE
of Regnier, Moller & Taylor
41 Lewis Street
Hartford, Connecticut 06103
Counsel for Appellant

I hereby certify that on this 11th day of June, 1975, three copies of the Notice of Appeal to the Supreme Court of the United States were mailed, postage prepaid, to Thomas P. FitzGerald, Esquire, Bayer, Phelon & Squatrito, 63 East Center Street, Manchester, Connecticut 06040, Counsel for the Appellee. I further certify that all parties required to be served have been served.

[s] MAURICE T. FITZMAURICE

MAURICE T. FITZMAURICE
of Regnier, Moller & Taylor
41 Lewis Street
Hartford, Connecticut 06103
Counsel for Appellant

Appendix D

SUPREME COURT

November Term, 1973

Muriel Grover *v.* Town of Manchester

Action to recover benefits by the widow of a police officer who died as a result of heart disease, brought to the Superior Court in Tolland County, where the court, *Armentano, J.,* sustained the defendant's demurrer, granted the defendant's motion for judgment and rendered judgment for the defendant, from which the plaintiff appealed. *No error.*

Thomas P. FitzGerald, with whom were *Philip Bayer* and, on the brief, *Herbert A. Phelon, Jr.,* for the appellant (plaintiff).

Maurice T. FitzMaurice, town attorney, and *David M. Barry,* for the appellee (defendant).

Per Curiam. This is an appeal by the plaintiff, the widow of a member of the police department of the defendant town of Manchester, from a judgment rendered for the defendant after the trial court had sustained its demurrer to the plaintiff's complaint.

The plaintiff's husband died from heart disease while serving as a uniformed regular member of the Manchester police department and the plaintiff, his dependent at the time of his death, brought an action for compensation under the provisions of § 7-433c of the General Statutes, enacted as Public Act No. 524 of the Public Acts of 1971, which provides, in relevant part, as follows: "Notwithstanding any provision of chapter 568 . . . in the event . . . a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service,

which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death . . . his dependents . . . shall receive from his municipal employer compensation . . . in the same amount and the same manner as that provided under chapter 568 if such death . . . was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment."

The complaint, which simply alleged the undisputed facts that the plaintiff's decedent, prior to his employment by the defendant, had successfully passed a physical examination which failed to reveal any evidence of hypertension or heart disease, and that he was employed by the defendant as a police officer when he died from an acute myocardial infarction or heart disease, sought an order requiring the defendant to pay to the plaintiff the benefits to which she claimed to be entitled "under said Public Act No. 524." The defendant demurred on three grounds, the first, which was sustained by the trial court, being: "The plaintiff has stated no cause of action against the defendant under the provisions of Public Act 524 (1971). That statute does not allow recourse to the courts unless the requirements of Chapter 568 of the General Statutes have been met." Chapter 568 is the Workmen's Compensation Act, and the sole issue thus raised is whether the court erred in ruling that the plaintiff had no recourse to the courts under § 7-433c unless the requirements of the Workmen's Compensation Act first had been met.

The plaintiff, in arguing that the statute does not require proceedings under the Workmen's Compensation Act and that it sets up a new, independent procedural avenue for claims of this type, cites its legislative history and the frustrations resulting from the treatment given by the compensation commissioners and, upon appeal, by the courts, to

the statutory predecessors of § 7-433c. Particular reference is made by the plaintiff to Public Act No. 380, § 1, of the Public Acts of 1969, formerly § 7-433a, which this court declared unconstitutional in *Ducharme* v. *Putnam,* 161 Conn. 135, 285 A.2d 318, on the ground that the conclusive presumption created by the statute contravened the due process clauses of both the Connecticut and the United States constitutions.

Nothing, however, in its legislative history or in its statement of purpose, as cited by the plaintiff, persuades us that § 7-433c was intended by the legislature to require each municipality in Connecticut to create separate administrative machinery duplicating that already available under the Workmen's Compensation Act for resolving claims by firemen and policemen and further to burden by additional litigation of such claims the courts as well as the municipalities. The statute specifically mentions the Workmen's Compensation Act in two places which, when read together, clearly provide in pertinent part that "[n]otwithstanding any provision of chapter 568 . . . he or his dependents . . . shall receive from his municipal employer compensation . . . *in the same amount and the same manner as that provided under chapter 568* . . . ." (Emphasis added.)

The only procedural avenue mentioned for bringing claims is chapter 568, which outlines clearly the procedure to be followed by claimants for workmen's compensation before recourse to the courts is available. See *Ranta* v. *Bethlehem Steel Corporation,* 271 F. Sup. 286, 287 (D. Conn.); *Pallanck* v. *Donovan,* 105 Conn. 591, 595, 136 A. 471.

We conclude that the trial court properly sustained the defendant's demurrer on the first ground, as stated above, and since this conclusion is dispositive of the issue raised, it is not necessary to discuss the constitutional questions alternatively raised in the briefs.

There is no error.

Appendix E

Muriel P. Grover, Dependent Widow of Leo Grover, Deceased 579 Center Street, Apt. 4A Manchester, Connecticut *Claimant*	:	CORAM
vs.	:	Workmen's Compensation
Town of Manchester Manchester, Connecticut *Employer*	:	Compensation Commissioner
and	:	First District
The Hartford Insurance Group 770 Asylum Avenue Hartford, Connecticut *Insurer*	:	March 1, 1974
Respondents	:	

Appearances:

Thomas Fitzgerald, Esq., 63 East Center Street, Manchester, Connecticut, represented the claimant.

William Broneill, Esq., Town Hall, Manchester, Connecticut, and Maurice FitzMaurice, Esq., 41 Lewis Street, Hartford, Connecticut, represented the Town of Manchester.

Douglas L. Drayton, Esq., 41 Lewis Street, Hartford, Connecticut, 41 Lewis Street, Hartford, Connecticut, represented the Town of Manchester, Employer-Respondent and The Hartford Insurance Group, Insurer-Respondent.

AWARD OF COMPENSATION PRO FORMA

Pursuant to statutory notice, a hearing was held by the undersigned at his office in Hartford on the above captioned claim on February 27, 1974.

1. On September 7, 1971, the claimant's decedent was a regular member of the paid Police Department of the respondent Town of Manchester and the latter had on said day insured its entire liability under Chapter 568 of the General Statutes with the respondent-insurer.

2. In accordance with a stipulation executed by the claimant and the Hartford Insurance Group, which stipulation has been filed as an exhibit in this case, it is found as a fact that the decedent's death was not one that was compensable within the meaning of the Compensation Act (Chapter 568 of the General Statutes).

3. The parties further stipulated, and it is therefore found as a fact, that on said date of September 7, 1971, the decedent's weekly compensation rate was $84.00.

4. The deceased performed his usual duties as a police officer on September 4, 1971. From then on because of the weekend and his regular days off the claimant was off duty. On September 7, 1971 he became ill, and was taken to the Manchester Memorial Hospital. He had suffered a coronary occlusion as a result of an acute myocardial infarct.

5. On said day, September 7, 1971, the decedent expired.

6. On November 13, 1956, the decedent was given a pre-employment physical examination by Dr. Nicholas A. Marzialo, a general medical practitioner in Manchester, Connecticut.

7. At the time of his examination, the doctor found no evidence of hypertension or heart disease present in the deceased.

8. From December 1, 1956 to the date of his death, the deceased was continually employed as a paid police officer by the Town of Manchester, Connecticut.

9. The respondent, Town of Manchester, offered to produce testimony to show that the claimant's occlusion and infarction did not arise out of his employment and were unrelated thereto. This offer of proof was denied.

10. The respondent Town contended that Section 7-433c is unconstitutional, but the undersigned advised Counsel that being a Commissioner, he is without authority to determine the constitutionality of any legislative enactment.

11. The claimant and her decedent were married in the Town of Manchester on September 7, 1968. There are no children as a result of their marriage. The claimant and the decedent were living together at the time of his death and she was totally dependent on him for support within the meaning of the Compensation Act.

12. The funeral bill of the Holmes Funeral Home of Manchester was approximately $1,300.00, which the claimant has paid. The respondent, Town of Manchester, is hereby ORDERED to pay to the claimant the sum of $1,000.00 toward said funeral bill.

13. The claimant has paid to the Manchester Ambulance Service the sum of $40.00, which the Town of Manchester is ORDERED to repay to her.

14. It is hereby ordered, adjudged and decreed that the respondent, Town of Manchester, pay to the claimant widow the sum of $84.00 weekly commencing on September 8, 1971; and continuing until her death or remarriage, if such should occur. Payment to the widow to date shall be made by check and sent to the office of her attorney; and future payments are to be made to her weekly at the following address:

579 Center Street, Apt. 4A
Manchester, Connecticut

15. It is further ordered that since the claimant, as set forth in her stipulation with the Hartford Insurance Group, chose to proceed under Section 7-433C of the General Statutes and not to claim under Chapter 568 of the General Statutes, her claim against the respondent, Hartford Insurance Group, is dismissed.

16. The claim herein raised involves a doubtful question of law which the public interest requires should be finally and definitely determined, and therefore, the claim of the claimant against the Town of Manchester under Section 7-433C of the General Statutes is allowed pro forma.

IT IS ADDUCED, DECREED, ORDERED, and AWARDED accordingly.

/s/ Harry G. Kaminsky

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Compensation Commissioner